

TR 3286

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TCSO case #09-35213 Assist APD

Reported by T. Ramsey #3286.

My name is Theodore Ramsey and I have been a licensed Peace Officer since 1996. I have been employed with the Travis County Sheriff's Office since 2001 and assigned to Law Enforcement since 2002.

In 2008, I was assigned to work the southwest district (D40) on night shift. While working in the area, I monitor the radio traffic of the Austin Police Department's (APD) David sector due to the amount of overlapping jurisdiction adjacent to my assigned district. We are routinely requested to respond to assist, and back up each other with calls as needed.

On 12-28-09 at about 2:56 AM, I was on patrol, but stationary while writing reports in about the 11900 block of Manchaca Road. The previous night, I had taken a report for a Leaving the Scene Collision in the same area and was looking for the suspect vehicle. While monitoring the police radio, I heard two APD Henry district units, Officers J. Berry & M. Carter, responding to a physical disturbance at 11815 Johnny Weissmuller Lane. I was only approximately one mile from the location. I continued to monitor the call and the dispatcher advised that the caller, later identified as:

York, Kimberley  
B/F

was fighting with her boyfriend, later identified as:

James, Roger  
B/M 12-27-71.

I knew that the officers would be coming from another district and would probably have an extended response time. Since the disturbance sounded like it was physical and in progress, I was concerned that York was in immediate danger if I did not respond. I sent a message using my in-car computer to the APD David district dispatcher asking if they would like me to respond. The dispatcher advised that it sounded like a physical disturbance and asked me to respond. After receiving the request, I created a call on my in-car computer at about 2:59 AM to Assist APD at 11815 Johnny Weissmuller Ln for a possible physical disturbance. This allowed the dispatcher and all other Sheriff's units monitoring David sector to see that I was responding. Due to my proximity and my location, I responded to the scene without activating my emergency lights and sirens. While responding, the dispatcher advised that York had locked herself in the bathroom and James had broken down the door. I activated the Arbitrator in-car video camera in my patrol car, unit #2882, while responding.

I arrived at the scene approximately 1 ½ minutes later and saw York in front of the house. The house was a red brick two story home located on the north side of the road. I parked

TK 3286

my patrol car at the intersection of Johnny Weissmuller Ln and Marcus Abrams Blvd. York was waving at me when I pulled up. I approached York and asked her to step back toward my patrol car. Victim's are moved away from a scene to protect them and the officer from any further assault. York appeared calm but said that she had been fighting with James. I asked York if she was injured, York said that she had been hit in the head numerous times but was fine. As I spoke with York, I observed a large bump about two inches in diameter on her forehead. I asked if James was still in the house and she said yes. I asked if there were any weapons in the house. York said that there was a gun in the house and she kept the magazine hidden in another location. She did not say what type of gun it was and where the magazine was hidden. When asked, York said that she did not know if James had been drinking or using drugs. I asked if James had been arrested before, and she said that James had "a lot going on" and was being accused of child molestation. I asked if James had any type of violent criminal history and she said no. I asked if James would give us any problems or fight and she said she did not know.

While talking to York, I could hear sirens in the background. Since York was out of the house, I advised the Sheriff's Office dispatcher that the parties were separated and the responding APD units could reduce their response. I continued talking to York and kept her calm until Officer Berry arrived. Officer Carter arrived a moment later. I briefed the officers quickly and they began talking to York. Since there was a gun in the house and James had already assaulted York, I continued watching the house. I was concerned that James would emerge from the house with the gun or try to assault York again.

I overheard Berry and Carter saying that they had a good assault. Through my training, I understood that to mean that James had committed an assault against York and there was probable cause to make an arrest. Berry and Carter wanted to go to the residence to place James under arrest. I asked Berry if I was ok to leave or if he wanted me to stay. Berry said that he wanted to stay until James was in custody. York said that James was still in the house and offered them a key to enter. We discussed the possibility that there was a gun in the house and potential dangers of entering. Since the gun had not been involved in the disturbance, it was decided to go to the house and see if James would come out and speak to them. We asked York to wait near the intersection while we approached the house. Since the call was in the City of Austin, Berry and Carter went to the front door to try to contact James. I went to watch the back door in case James attempted to escape or come up behind the officers and assault them. The front door faces the road and is near the southeast corner of the house. I went to the east side of the house between 11815 Johnny Weissmuller Ln and 11817 Johnny Weissmuller Ln. The backyard fences between the houses are offset and I was able to see the rear door of 11815 Johnny Weissmuller Ln from the adjoining yard. When I arrived the back porch light was off. I heard the Officers knock at the front door and announce "Austin Police". The Officers continued knocking and announcing police. From my experience, I knew that the knocking sound I heard was consistent with someone using a flashlight to knock. The Officers continued knocking and I could hear Carter asking James to come out and talk to them. Carter said that they just wanted to find out what was going on.

I observed the back porch light come on and James peek out of the back door blinds

toward my direction. When James looked at me, there was something about the look in his eyes that I cannot describe that caused me concern. I yelled to Berry and Carter about my observations. From his actions, I had no doubt that James knew that the police were there.

Since James was not responding to us and there was a gun in the house, I was concerned that he would barricade himself in the house. From a barricaded position, I knew he would be able to fire his gun at us while using the walls of the house for protection. This would have forced all of the officers on scene to retreat away from the house for more distance. Since I may have to cover an area from a greater distance, I felt that a shotgun would be more effective at stopping any threat from a longer range than my handgun. While the Officers continued knocking, I suggested to Berry that he cover the back door while I retrieve my shotgun from my patrol car in case the situation turned into a barricaded situation. Berry said that he thought it was also a good idea and went to the rear of the house. I returned to my patrol car and retrieved my Mossberg 500 12 gauge shotgun. The shotgun is loaded with both slugs and buckshot that were issued by the Sheriff's Office. Sheriff's Office Protocol allows deputies to load the slug and/or buckshot rounds in any order. Since I do not carry a patrol rifle, my personal preference is have the first round loaded to be a slug.

I returned to the house and resumed the position at the rear of the house. The Officers continued trying to speak with James at the front door. I could hear Carter saying that he just wanted to talk. James was inside yelling and I distinctly heard him yell "fuck you". I remember seeing lights going off and on inside different rooms of the residence. I was concerned that James may be inside of the house looking for the magazine to the gun. I remember hearing one of the other officers request a supervisor, I also heard on of the officers request additional units to respond to begin setting up a perimeter in case James fled from the house.

I heard some noise coming from the first floor and heard one of the officer say that they thought James was coming to the door. I began dividing my attention between the back door and the front door but stayed in my position along the fence at the rear of the house. I heard the front door of the house open and immediately heard Officers Berry and Carter start yelling "gun" and "he's gotta gun". I looked and saw Carter running toward the road and the rear of a pickup truck in the driveway at 11817 Johnny Weissmuller Lane. I saw Berry draw his pistol and start yelling "drop the gun". Berry was facing the front door and had his weapon pointed toward the front door. Berry hooked around the southeast corner of the house which was next to the door on the side of the house that I was on. Neither Berry nor Carter had any type of cover and were in the open. Both were in very vulnerable positions. I knew that if James came around the corner toward us, both Berry and I would be exposed without any type of cover. I ran to the front of the house to provide cover with my shotgun. I slowly pried (moved) around the southeast corner and remember yelling to drop the gun. I did not see James on the porch and continued moving toward the door. I saw that the front door was closed and James had retreated back into the house. There was a window on the side of the house near the front door that was facing Berry and I. I was concerned that James would fire at us through the window. I

held cover on the door to allow Berry a chance to seek cover. I then retreated to a position of cover behind a pickup truck in the driveway at 11817 Johnny Weissmuller Ln. I positioned myself behind the front end of the truck over the hood and kept my shotgun pointed at the front door. Based on the locations I had last seen them, I believed that Berry was behind me to my right and Carter was at the rear of the truck that I was using for cover. I advised the dispatcher, using my handheld radio, that James had a gun and had barricaded himself inside of the house.

Within seconds, James quickly exited the front door holding a shiny, silver semiautomatic handgun in his hand. James left the front door standing open and took one step off of the porch onto another step. I could see James' body from about the thighs up but his lower body was obstructed by a bush. James was yelling at us to "get back". I was so focused on the gun and the direction it was pointing that I cannot remember which hand it was in. James was moving the gun around and pointed it in my direction. James swept the gun past me and turned toward where I believed Carter was standing. James seemed to fixate on the location where I believed Carter was located. I believed that James had seen Carter and was preparing to fire the gun at him. I gave numerous loud commands for James to "drop it". I also heard someone else yelling and believed they were saying "drop the gun". James turned back towards me and was pointing the gun in my direction. I believed that James was looking around and was intentionally pointing the gun at me while I was giving him commands. I continued telling James to "drop it". James was yelling but I could not understand what he was saying. James was holding the gun in front of him at about hip level away from his body. James appeared to be aiming the gun at me. I believed that James was going to fire the gun at me from a hip high position and feared for my life. I aimed my shotgun at the center mass of James' chest and fired one round. I ejected the empty shotgun shell casing and loaded another shell. I immediately saw a second flash and heard another shot somewhere to my right. I advised the dispatcher that shots had been fired and one person was down. I saw that James was on the ground in a half seated position. I circled around and started approaching James ordering him to show me his hands. Berry was also approaching giving the same announcement. James' eyes were open very wide and he appeared to be blankly staring over our heads into the distance. James slowly lied down onto his back with his eyes still open. Due to his position, I could not see James' hands or the gun. Berry and I continued giving command for James to show us his hands. I watched and could not see James' chest moving to indicate breathing. On the upper right side of James chest, I saw a large hole in James' shirt consistent with the size of a shotgun slug. It appeared to be an entrance wound but there was no blood around the hole. Under James' left side, we saw a shiny object that we initially thought was the gun. James was rolled slightly and we determined the object was part of a landscape light. Under the bush that James had been standing behind, I observed a shiny, silver semiautomatic hand gun. At one point, I remember hearing York yelling and asking if James was ok. I was concerned that York would see that James had been shot and would be further traumatized by the event. I told Carter to get her away from the scene. Carter began walking with York back towards the patrol cars.

Berry bent down and check for a pulse on James' neck. I did not see James' chest moving

to indicate that he was breathing. Berry advised that James was not breathing and did not have a pulse. I asked Berry if he had a CPR mask and he said yes. Berry ran back to his car to retrieve the mask. Berry returned with the mask and began CPR. I walked away from the house and called Sgt. Hoge using my cell phone to advise him of the situation. I was still shaken up by the incident and felt myself breathing hard while trying to talk to Sgt. Hoge. Sgt. Hoge told me to try to stay calm and he was on the way. When responding units arrived, we cleared the house. I covered the stairway while two officers cleared the first floor. On the second floor, I checked what appeared to be a child's bedroom. No one else was located in the house. I returned to my patrol car and secured my shotgun. While walking to my patrol car, I felt very distraught about being forced to fire my weapon at James and felt myself starting to tear up. I had to take more deep breaths to calm down. I saw Carter near my patrol car and he said that he had secured York in the back of his patrol car. I retrieved crime scene tape from my vehicle and had a hard time finding it because I was shaking. I saw that two APD units were already putting up crime scene tape. I assisted them with putting up the crime scene tape. I retrieved my digital camera and took several digital photos of the crime scene. On the hood of the truck from where I had shot, I observed the shotgun casing sitting on the truck near the base of the windshield. At one point, I asked Berry if he needed help. Berry said the Austin Fire Department was just arriving and he did not need help. I observed firefighters take over care of James. Numerous APD officers arrived on scene and took over. I stayed separate from Berry and Carter. I remember the someone from the Fire Department or EMS say that James was dead. I felt my heart sink and started shaking again.

I saw several of James' family members arriving near the intersection of Johnny Weissmuller Ln and Marcus Abrams Blvd. I relocated to the intersection of Johnny Weissmuller Ln and Jesse Owens Drive. Deputy Small and Sgt. Hoge arrived on scene a short time later. While talking to Sgt. Hoge, I told him that my in-car video camera had been on during the incident. Since the incident was over, Sgt. Hoge told me I could turn off the body microphone. I turned the microphone off in front of him so he could see that it was on.

I met with APD detectives and conducted a walk-thru of the incident. APD crime scene personnel photographed me and my shotgun, which was still secured in my patrol car. I removed the shotgun and it was turned over to APD along with the black gloves I was wearing at the time. The digital camera containing the photos was turned over to Sgt. Hoge. Sgt. Hoge also advised me that the video card had been removed from my patrol car's camera. Capt. Lofton advised me that I was on Administrative Leave effective immediately.

I was transported to the Criminal Justice Center by Internal Affairs Det. D. Canty for a drug and alcohol test. After four attempts, the TCSO nurses were unsuccessful drawing blood. Sgt. S. Jones authorized a urinalysis screening to be done instead. I provided a specimen and was transported to the Moore Building by Det. Canty. Det. Canty said that he would send me a notice of an Internal Affairs investigation.

I have been informed that under the penal code of the State of Texas, Section 37.02: A person commits the offense of perjury if, with intent to deceive and with knowledge of the statement's meaning, he/she makes a false statement under oath or swears to the truth of a false statement previously made; and the statement is required or authorized to be made under oath.

T Ramsey #3288  
Affiant

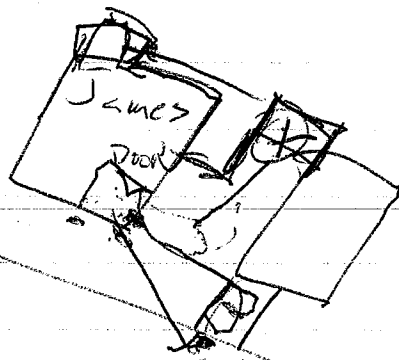
I am giving this statement to Detective Benningfield of the Austin Police Department. I can read and write the English language. The above statements are true and correct.

SUBSCRIBED AND SWORN TO before me, by the said:

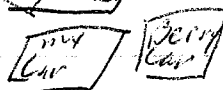
Theodore Ramsey #3286 this 7th day of January, 2010.

Det S.R. #2453  
Peace Officer

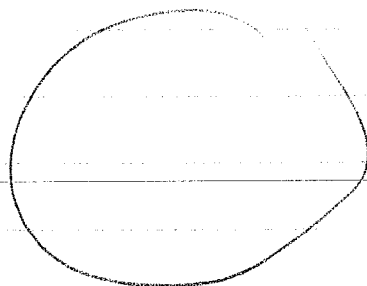
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Marcus  
Abrams



Johnny  
Weissmiller



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